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BEFORE THE ARIZONA CORPORATION COMMISSION
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IN THE MATTER OF THE REVIEW AND
POSSIBLE REVISION OF ARIZONA
UNIVERSAL SERVICE FUND RULES, ARTICLE
12 OF THE ARIZONA ADMINISTRATIVE
CODE.

Docket No. RT-00000H-97-0137

IN THE MATTER OF THE INVESTIGATION OF
THE COST OF TELECOMMUNICATIONS
ACCESS

Docket No. T-00000D-00-0672

REPLY BRIEF
OF
JOINT CLECS

September 14, 2010

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2 Lightwave, LLC, McLeod USA Telecommunications Services, L.L.C. dba PAETEC Business
3 Services, tw telecom of arizona llc and XO Communications Services, Inc. ("Joint CLECS")
4 submit their Reply Brief in these dockets.

5 Introduction

6 As anticipated based on the hearing testimony, the positions of the parties in this docket
7 range from "A": taking no immediate action in light of the FCC's ongoing activity on intercarrier
8 compensation and universal service in connection with the National Broadband Plan ("NBP"), to
9 "Z": implementing an immediate flash cut that resets intrastate switched access rates to interstate
10 switched access rate levels. What is apparent from the extensive briefing is that there is really no
11 compelling reason to take any action in Arizona on access charge reform at this time. Clearly, the
12 FCC is moving forward on the issues. Any action in Arizona should consider federal action.
13 Moreover, the potential benefits to customers of Arizona-specific reform are unclear at best. In
14 contrast, the proposals to mitigate the revenue impact on affected carriers will result in substantial
15 increased costs to end user customers (either through increased rates or increased AUSF
16 surcharges). Finally, the necessary procedures to ensure due process, to enact necessary rules and
17 to provide sufficient lead time for carriers to implement any reform necessarily pushes the
18 effective date of intrastate access reform well into the future.

19 Joint CLECs stand on their position as stated in their Initial Brief: wait for the FCC to
20 complete its ongoing NBP process to ensure that any reform in Arizona is both necessary and
21 consistent with the federal reform. If the Arizona Corporation Commission believes it must enact
22 Arizona-specific reform now, then it must incorporate safeguards in its reform which allow an
23 appropriate transition to appropriate new intrastate switched access rates. Joint CLECs' position is
24 reasonable and comports with other parties' positions. For example, RUCO agrees that there is no
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1 pressing need for reform at this time.¹ ALECA acknowledges that it might be best to wait for the
2 FCC.² Qwest acknowledges the need for a sufficient transition period.³ Commission Staff
3 recognizes the need for a CLEC opportunity to submit CLEC-specific cost information that could
4 impact the timing and schedule required to implement changes to access rates.⁴

5 Joint CLECs urge the Commission to focus its limited resources on more pressing issues
6 before it, particularly given the FCC's ongoing activity on the intercarrier compensation universal
7 service issues. However, should the Commission press forward with Arizona-specific access
8 charge reform, it must be careful not to cause undue hardship and disruption to the competitive
9 telecommunications landscape in Arizona.

10 **I. No compelling need for Arizona-specific reform exists now.**

11 **A. The FCC is addressing access reform and universal service.**

12 No party truly disputes that the FCC has set forth a timeline for moving forward with the
13 NBP, including unified reform of intercarrier compensation ("ICC"). Nor do they dispute that the
14 FCC is moving forward on the NBP. At most, parties raise concerns about how long the FCC
15 proposes to take to complete the reform. However, ICC reform will have substantial impacts on
16 access charges. Moving ahead of the FCC may result in Arizona reform that will be preempted or
17 simply meaningless. Without a truly compelling need for Arizona-specific reform, it makes little
18 sense for the Commission to expend resources on rulemakings and other proceedings that may
19 have to be restarted or altogether repeated to conform to policy decisions made by the FCC.
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22 ¹ RUCO Closing Brief at 5 ("RUCO asserts there is no pressing, emergent need to modify access
23 charges and that specific modification of charges should not be effectuated in the context of a
24 rulemaking proceeding.").

25 ² ALECA Initial Brief at 9 ("Given the time required to promulgate an amended AUSF rule and to
26 complete a large number of ALECA member rate cases, the Commission may be better served to
27 wait for the FCC to implement its Intercarrier compensation reform targets as set out in its
"Connecting America: The National Broadband Plan.").

³ See Qwest Initial Brief at 2-3.

⁴ See Staff's Initial Post-Hearing Brief at 9.

1 Certainly, the potential waste of Commission and industry resources provides little, if any, public
2 benefits.

3 Waiting for the FCC to act also makes sense because the NBP also intends to reform USF
4 programs. The other side of the access charge/ICC issue is the forward-looking method of funding
5 the federal USF programs, including changes in the types of networks the FCC proposes to fund in
6 the future (i.e. Broadband Networks and the Connect America Fund). If Arizona shifts revenue
7 collected in access charges to the AUSF to continue to fund basic switched local exchange service,
8 it risks missing the purpose and extent of the FCC's planned reforms. In other words, Arizona
9 may end up funding the legacy voice-only network that the FCC is requiring to shift to a
10 broadband network to remain eligible for federal USF support. That discrepancy places carriers in
11 a difficult situation regarding what network design it should be moving towards.

12 **B. Benefits to consumers are unclear and uncertain.**

13 Although several of the parties attempt to address potential benefits from state access
14 reform, the specific benefits of the reform are not clearly delineated and are not certain to actually
15 manifest themselves. No party attempts to explain why the ongoing FCC reform will not provide
16 the same purported benefits.

17 Moreover, of the IXC's, only AT&T has indicated that it will reduce rates for certain
18 customers. But it is unclear how many of AT&T's customers will see any reduction in long
19 distance rates. And it is unknown whether any other Arizona consumers will see any long distance
20 rate decreases and, if so, when.

21 However, what is clear is that under every proposal for reform, end user customer local
22 rates and surcharges will increase. The revenue neutral proposals would make up lost access
23 charge revenue from increases in other local exchange rates or through increased AUSF
24 surcharges. By seeking to avoid intrastate access charges, the IXC's are simply trying to avoid
25 paying for facilities they use to provide long distance and place those costs elsewhere.⁵ Without
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27 ⁵ See RUCO Closing Brief at 10-13.

1 some guarantee of a pass-through of access charge reductions to end user customers, these
2 increased costs to Arizona consumers to offset reduced access charges will simply help increase
3 the financial bottom line for large IXC's.

4 **C. ATT's arguments concerning impacts of intrastate access charges on the**
5 **market are ill conceived.**

6 AT&T asserts that consumers are choosing alternatives to long distance, in part because
7 high access charges are driving consumers away from wireline networks.⁶ AT&T further argues
8 that this results in reduced access minutes and lower access revenues as those consumers attempt
9 to avoid paying the subsidies implicit in long distance charges.⁷ However, AT&T also asserts that
10 the market is unable to discipline access rates.⁸ These two arguments do not jibe. If access
11 minutes (and thus CLEC access revenue) are falling due to high access rates, then the market is
12 working and CLECs may be forced to take actions to preserve some access revenue. Instead,
13 AT&T is proposing to take a declining revenue source and replace it with something that faces less
14 competition such as local rates in rural areas or a universal service fund.

15 **D. Verizon's arguments regarding "unreasonably high" CLEC access rates are**
16 **disingenuous.**

17 Verizon argues that the Commission should move swiftly to lower CLEC's access rates.
18 However, Verizon does not identify with particularity which CLEC rates are abusively high or
19 disproportionate. This omission is understandable as Verizon's own CLEC subsidiary has rates
20 substantially greater than the average of the Joint CLEC access rates. The MCImetro access rate is
21 more than 40% higher than the average Joint CLEC access rate. The table at page 2 of Mr.
22 Denney's reply testimony references the tariff pages confirming these rates. Verizon's ILEC has
23 even higher rates (Aron Direct, Figure 1, p. 10). Through testimony and briefing Verizon is
24 asking the Commission to transfer network costs from switched access purchasers (IXCs) to

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26 ⁶ AT&T Post-Hearing Brief at 2, 3, 11.

27 ⁷ AT&T Post-Hearing Brief at 3, 11, 13.

⁸ AT&T Post-Hearing Brief at 8.

CLECs without regard to the negative impact such a revenue shift will have on competitors. If Verizon is interested in the well-being of consumers and opposes disparities in the intercarrier compensation system, then Verizon should reduce its own CLEC access rate in Arizona to at least the average Joint CLEC level. Pending such a revision, the Commission should disregard Verizon's arguments regarding CLEC access rates. However, even if Verizon were to make such an offer, Verizon's claims that CLEC access rates are unreasonably high in Arizona is unsupported by credible evidence.

II. Access charge reform creates problems for CLECs.

A. "Revenue neutral" reform is unavailable for most CLECs.

Several parties tout a "revenue neutral" approach to access charge reform under which CLECs could raise other rates to offset lost access revenues. They use this approach to justify a streamlined process for reducing access rates. However, CLECs operate in an extremely competitive retail environment that precludes any certainty regarding rate increases (and resulting increased revenue.) As a result, the ultimate process for reducing access charge rates implicates -- and should address -- the due process concerns for reduction of rates as set forth in Joint CLECs' Initial Brief.⁹ Additionally, any process for reducing access charge rates should recognize and accommodate CLECs' long-term contractual commitments to customers and each carrier's inability to raise rates for customers already under contract.

B. Gradual reform is critical for CLECs.

As discussed in detail in the Joint CLECs' Initial Brief, any access charge reform must be done over a significant transition period in order to provide CLECs sufficient time to modify business plans and to meet contractual and other legal obligations.¹⁰ RUCO agrees with this aspect of access charge reform.¹¹ And Qwest appears to acknowledge the need for an appropriate

⁹ Joint CLEC Initial Brief at 6-8.

¹⁰ Joint CLEC Initial Brief at 11-12.

¹¹ RUCO Closing Brief at 13 ("Clearly, the FCC recognizes that the reform in Intercarrier compensation (i.e. access charges and the USF) needs a transition period and will take place over at least a 10-year period of time.").

1 phase-in period.¹² Moreover, the glide path concept has been used before by the FCC in reducing
2 interstate access rates and is a key element of the NBP's intercarrier compensation reform,
3 including intrastate access charge reform. The first phase of any mandated change to any
4 competitive carrier's access rate should begin no earlier than three years after notice to that carrier
5 of a decision in this docket and, when the reduction does begin, it should then be phased in over a
6 number of years.

7 **III. Due process is required to avoid confiscatory impact of reform.**

8 The need to reflect the CLEC-specific networks and the CLEC-specific costs presents a
9 due process challenge for access reform. Mandating a reduction to a certain access rate --
10 particularly one based on an ILEC rate -- may be confiscatory. A CLEC must have an opportunity
11 to present information specific to its network and its operations in order to avoid an arbitrary and
12 confiscatory result. Any process for access charge reform must include such an opportunity.

13 The other parties did not address in any detail the appropriate process for revising CLEC
14 access rates. And the appropriate process depends on the ultimate goals set by the Commission for
15 access charge reform. Once the general policies for access charge reform are identified and
16 adopted by the Commission, then the appropriate process to meet those policies can be addressed
17 in more detail in order to avoid arbitrary and confiscatory results.

18 **Conclusion**

19 Joint CLECs believe that it is both premature and unnecessary for the Commission to
20 expend further resources on intrastate access charge reform in light of the ongoing FCC activity
21 regarding intercarrier compensation and universal service. If the Commission presses forward
22 with access charge reform at this time, it should adopt policies that will not harm CLECs or
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27 ¹² See Qwest Initial Brief at 2-3.

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1 undermine competition and will provide for due process that avoids arbitrary or confiscatory
2 results from such reform.

3 RESPECTFULLY SUBMITTED this 14th day of September 2010.

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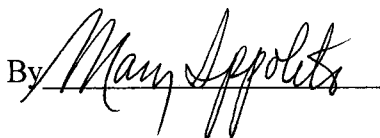
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